

13281 PLGG

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197612

DATE: March 28, 1980

MATTER OF: A&R Window Cleaning & Janitorial Service Inc.

82604241

46000035

DIGEST:

82604242

[Protest concerning small business size status] of offeror is not subject to review by GAO since by law it is matter for decision by Small Business Administration.

A&R Window Cleaning & Janitorial Service, Inc. protests award of a contract under request for proposals F11603-79-K-0004, a small business set-aside, by the Department of the Air Force to International Total Services, Inc. (I.T.S.).

A&R contends that I.T.S. does not qualify as a small business concern because of its affiliation with other firms. For that reason, and because A&R allegedly did not receive official written notice of the contract award, A&R requests that the award be terminated.

This Office does not review size status protests since under 15 U.S.C. § 637(b) (1976) the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes. See Advance Building Maintenance, B-193819, January 30, 1979, 79-1 CPD 72. We understand from the contracting officer that A&R's protest has been referred to the SBA.

The documents submitted by the protester suggest that the agency sent out notices of award, but apparently A&R did not receive the notice. This failure by A&R to receive the notice does not invalidate the award. See Caedmon Division, The Raytheon Company, B-194030, August 21, 1979, 79-2 CPD 139.

~~009443~~ 111938

We note, however, that it also appears the contracting officer did not provide the pre-award notice required by Defense Acquisition Regulation §§ 3-508.2(b) and 1-703(b)(1), the purpose of which is to allow unsuccessful offerors the opportunity to protest the small business size status of the apparent successful offeror. Under these circumstances, should SBA rule that the awardee is not a small business, termination of the contract would appear to be appropriate. See R. E. Brown Co., Inc., B-193672, August 29, 1979, 79-2 CPD 164; PSI-Peripheral Support Division of Meson Corporation, B-180675, B-182214, May 23, 1975, 75-1 CPD 308.

The protest is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel